IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 733 of 03

Parikshit Saini …… Petitioner

Vs.

State of Uttaranchal and others…… Respondents

Petitioner in person
Mr. N.B. Tiwari for the State
Mr. B.D. Kandpal for the Uttaranchal Public Service Commission

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Coram: Hon. S.H. Kapadia, C.J.
Hon. P.C. Verma, J.

Date: 8.8.2003.

PC:-

Rule.

By the consent of parties rule is made returnable forthwith.

In this petition, the petitioner seeks to challenge the validity of executive order passed by the State of Uttaranchal, by which the reservation for other backward classes is fixed at 14%. The executive order is dated 18.7.2001. It is the case of the petitioner that the State of Uttaranchal by Notification dated 7.6.2002 has advertised 35 posts for Uttaranchal Judicial Services (Civil Judge Junior Division) and five posts were advertised for other backward classes. The petitioner has applied for the said post. The petitioner appeared in the preliminary examination held by the Uttaranchal Public Service Commission. He was declared successful in the other backward class category. He appeared in the main examination held in May,2003. He was declared successful on 22.6.2003. He appeared in the third stage of examination for interview on 24.7.2003, in which he was not selected.

The main contention of the petitioner is that as per section 3 of the U.P. Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994, there is 27% reservation for the other backward classes which has been reduced to by way of executive order dated 18.7.2001 issued by the State of Uttaranchal to 14% and in the circumstances, he has challenged this executive order. We do not find any merit in this argument.

Section 87 of U.P. Reorganisation Act, 2000 deals with power to adapt laws. It gives power to the appropriate Government to make modification of the existing lay by passing an order. In the present case,

such an Order has been passed restricting the reservation to 14%. Such an order is under Section 87 of U.P. Reorganisation Act. Hence, there is no merit in the above contention.

Secondly, in the case of Indra Sawhney Vs. Union of India reported in A.I.R. 1993 SC 477 at page 485, it has been laid down by the apex Court that it is not necessary that the provisions on Article 16(4) should necessarily be made by the Parliament/Legislature; that such provision can be made by the Executive also; that an Executive Order making provision under Article 16(4) is enforceable the moment it is made and issued. In the circumstances, there is no merit in the writ petition. It is rejected at the admission stage.

Interim order, if any, stands vacated.

(P.C. Verma, J.) **(S.H. Kapadia, C.J.)**

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